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official agents to reside and perform their functions in the territories of the other, but also provides that such agents shall have the rights accorded to diplomatic and consular representatives in respect to the visé of passports, etc., and the liberty of communicating by code and cipher. Provision is also made that the official agents shall be at liberty to receive and dispatch couriers with sealed bags which shall be exempt from examination.

Both parties also agree generally to remove forthwith all obstacles to legitimate trade (other than in arms and ammunition) between Russia and the United Kingdom; and they agree specifically that "British and Russian merchant ships, their masters, crews, and cargoes shall in ports of Russia and of the United Kingdom, respectively receive in all respects the treatment, privileges, facilities, and immunities and protection which are usually accorded by the established practice of commercial nations."

AMOS S. HERSHEY.

NEW CONSULAR CONVENTIONS

One of the problems soon to confront the United States is the conclusion of consular conventions with states such as Czecho-Slovakia, Poland, Hungary, and the Serb-Croat-Slovene State, as well as with some of their older neighbors. No treaty to which the United States is now, or has been, a party, serves as a model for agreements to be negotiated. This is due to various causes among which may be noted loose drafting, the absence of uniform or comprehensive plans, and the traditional diplomatic tendency to weaken the significance of concessions by phrases saving the face of the grantor. The terms of American consular conventions have been productive of much litigation, arising from sincere divergence of opinion as to the correct interpretation of particular provisions; and the utterances of judges have emphasized the reasonableness of the conflict. This circumstance reveals the importance of applying fresh methods in the negotiation of new conventions. It emphasizes the necessity not only of a clear perception of precise points at issue, as well as of bases of agreement, but also of the use of expressions and phrases indicating with exactness the designs of the contracting parties. Thus, if there is accord that a consul be given a particular right, what is yielded should be definitely and clearly described. To avoid future controversy, and to enlighten the courts if their aid is invoked, the nature and, if possible, the scope of what is granted should be laid bare by provisions leaving no room for conflicting interpretations.

At the moment, it may be well to examine the character of some privileges which certain foreign states may endeavor to incorporate in new conventions with the United States. To states of continental Europe whose nationals emigrate in large numbers to the United States, there still remains great concern that the individual who is permitted to enter and dwell within our land be safeguarded in his economic rights as he begins and continues his struggle for bread. To protect obscure and ignorant and helpless people from those (often-times their own countrymen) who would prey upon them is still a matter of primary concern. To that end it is sought to accord aid and protection through

the consular representative. He is needed not only in the course of the various vicissitudes which commonly harass the life of the most law-abiding alien, but also when death overtakes him, and especially if he leaves surviving him a wife and children residing abroad who shared the fruits of his earnings while they waited for favorable opportunity to join him and unite their forces as an American family.

What is, therefore, likely to be sought is the conferring upon the consular officer of the right, in such an event, to administer the estate of a deceased countryman in preference to any other individual or local official, such as a public administrator, and the right also to definite recognition as the legal representative of the foreign heirs.

The consular right of administration has been variously, vaguely and loosely expressed in certain conventions of the United States. According to Article IX of a treaty with the Argentine Confederation of July 27, 1853, a consular officer was, under certain conditions, given the right "to intervene in the possession, administration and judicial liquidation of the estate of the deceased, conformably with the laws of the country, for the benefit of the creditors and legal heirs." Fifty-nine years later, the Supreme Court of the United States held that the convention failed to confer upon a consular officer a right of administration superior to that asserted by a public administrator pursuant to a local statute.¹

Article X of a treaty with Paraguay of February 4, 1859, provided that a consular officer "shall, so far as the laws of each country will permit, take charge of the property which the deceased may have left, for the benefit of his lawful heirs and creditors, until an executor or administrator be named by the said consul-general, consul or vice-consul, or his representative." Some time later, a convention with Sweden, concluded June 1, 1910, provided that a consular officer or his representative "shall, so far as the laws of each country will permit and pending the appointment of an administrator and until letters of administration have been granted, take charge of the property left by the deceased for the benefit of his lawful heirs and creditors, and, moreover, have the right to be appointed as administrator of such estate." American judicial opinion has construed these provisions as conferring upon a consular officer rights of administration which are subordinate to those established by local statutes in favor of particular classes of individuals.

In conventions with Peru, which are no longer in force, the United States appears, however, to have gone further. Thus in Article XXXIX of a treaty of July 26, 1851 (and followed in treaties of September 6, 1870, and August 31, 1887), it was declared that, until the conclusion of a consular convention, "in the absence of legal heirs or representatives, the consuls or vice-consuls of either party shall be *ex-officio* the executors or administrators of the citizens of their nation who may die within their consular jurisdictions, and of their countrymen dying at sea, whose property may be brought within their district."²

¹ See *Rocca v. Thompson*, 223 U. S. 317, affirming *In the Matter of the Estate of Ghio*, 157 Calif. 552. Cf. *In re Wyman*, 191 Mass. 276; *Carpigiani v. Hall*, 172 Ala. 287.

² See, also, Article VI of treaty with Persia, of December 13, 1856; also Article XXXIII, paragraph 10, of treaty with Salvador of December 6, 1870.

Thus in the negotiation of fresh conventions, it may be emphasized that the United States has in fact heretofore conferred by treaty the right to administer upon a consular officer. It seems important to observe also that the Supreme Court of the United States has been far from intimating that the President and Senate lack the constitutional power to confer it.³ If such a concession be regarded by them as essentially advantageous for the interests of the United States in the management of its foreign relations, there can be no doubt of the sufficiency of the treaty-making power of the Federal Government to deal with it by appropriate convention, no matter how intimately it may concern, or how definitely it may abridge, the operation of local statutes. The decision of the Supreme Court of the United States in the case of *Missouri v. Holland*,⁴ establishes the principle involved. There is merely needed a definite indication of the design of the contracting parties for the guidance of the courts. No legal impediment checks the establishment by treaty of the consular right to administer, if it be deemed expedient to confer it.

There is needed clear and uniform expression in new consular conventions of the principle variously recognized in existing treaties, that a consular officer is or becomes the legal representative of the non-resident heirs or dependents (of his nationality) of his countrymen who die intestate within his district. Article VIII of the consular convention with Germany of December 11, 1871, announced that for certain purposes such an officer should be presumed to be the legal representative. The underlying principle found recognition also in Article XV of the convention with Belgium of March 9, 1880. The provisions of these conventions suggest the desirability of a broad and definite statement for incorporation in fresh agreements to be concluded. It is required for the guidance of local governmental agencies, administrative as well as judicial, which are concerned with the problem of distributing funds, whether emanating from estates in probate or from other sources, to non-resident aliens.

For privileges such as the foregoing, states of Europe and of other continents may be prepared to offer concessions regarded in the United States as of substantial value, and possibly in relation to matters outside of the normal scope of consular conventions. The time is at hand when American commercial and essentially non-governmental bodies should, therefore, ascertain and make known through appropriate channels, in what regard the privileges of American consuls abroad require enlargement and clarification. To that end there is needed a comprehensive inquiry concerning the full scope of the functions which it is believed that a consular officer should be permitted to fulfil, and of the extent to which our existing treaties prove inadequate.

Both in the United States and abroad the value of the services of a consular officer is found to be proportional to the respect in which his office is held by local authorities with whom he is obliged to deal. It is suggested that the new

³ Declared Mr. Frederic R. Coudert, with reference to the case of *Rocca v. Thompson*, 223 U. S. 317: "We cannot feel that the court had any real doubt as to the constitutionality of a treaty granting to consuls the right to administer upon the estates of their deceased nationals for the benefit of foreign heirs." (*Columbia Law Rev.*, XIII, 181, 185.)

⁴ 252 U. S. 416.

conventions of the United States give expression to the esteem and dignity attached by the contracting parties to the consular office. The appeal of the American consular service to persons of the type most desired therein will be strengthened by the zeal with which the United States obtains and acknowledges fresh recognition in new treaties, of the importance of the consular function, as well as of the treatment to be accorded him who is empowered to exercise it.

CHARLES CHENEY HYDE.

NATIONALITY AND THE NINETEENTH AMENDMENT

The Amendment to the Constitution of the United States in accord with which the right to vote shall not be abridged on account of sex has been adopted. This action has given rise to the question as to whether other legal restraints, based on sex, should not also be removed to the end that women should have "complete juridical emancipation."

Among the limitations particularly affecting international relations are those in regard to the acquisition and determination of nationality. Practice in this matter has varied and still varies in different states, and has varied at different periods in the same state; but, in general, nationality has tended to follow the male. There have been exceptions, but these have in recent years become less common.

A national is a person owing allegiance to and entitled to the protection of a state. The change of conditions resulting from transfer of nationality may, therefore, be a matter of much significance. The tendency has been toward the adoption of the rule that the wife takes the nationality of her husband. The United States has been favorable to this rule when applied to alien women marrying nationals of the United States. Till 1907 the United States seemed reluctant to accept the converse of this doctrine, that an American woman marrying an alien lost her American nationality, but the United States did admit "that a woman's marriage with a foreigner should be regarded as an act of expatriation, at least when accompanied with residence abroad" (*Pequignot v. Detroit*, 16 F. R. 211).

In 1907 it was declared by act of Congress "that any American woman who marries a foreigner shall take the nationality of her husband" (U. S. Comp. St. Supp. 1909, 438). While the Congress of the United States may be competent to declare that a national expatriates himself or herself, it is open to question whether such an enactment would confer any other nationality on the expatriated party. Indeed the United States would deny this competence to certain states and has enacted that only a woman "who might herself be lawfully naturalized shall be deemed a citizen" upon marrying a citizen of the United States. The French law is more considerate and prescribes that "a Frenchwoman who marries an alien follows the nationality of her husband unless her marriage does not confer upon her the nationality of her husband, in which case she remains French" (I Dalloz, *Codes Annotés*, Art. 19, p. 217).